IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 19595 of 2007(G)

IP.3/2006 of I ADDL.SUB COURT,ERNAKULAM
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PETITIONER:

A.K.SEBASTIAN,
ALANGADEN HOUSE, GODOWN ROAD, EDAPPALLY P.O.,
THRIKKAKARA NORTH VILLAGE, ERNAKULAM.

BY ADV. SRI.N.N.ELAYATH

RESPONDENTS:
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1. CHEMBAVATHY,
THAIPARAMBIL HOUSE, GODOWN ROAD,
EDAPPALLY TOLL, KOCHI-24.

2. SEETHA,
SURESH NIVAS, GODOWN ROAD, EDAPPALLY TOLL,
KOCHI-24.

3. JOHNYKUTTY,
CHOLAMKORIL, NEAR GOLDEN PARK, GODOWN ROAD,
EDAPPALLY TOLL, KOCHI-24.

4. M.V.GEORGE,
MALAMEL HOUSE, EZHUMANTHURUTHI LANE,
MAROTTICHUVADU, EDAPPALLY P.O., KOCHI-24.

5. RASHEED,
THANNATH HOUSE, RAJEEV ROAD, EDAPPALLY P.O.,
KOCHI-24.

6. GEORGE POULOSE,
PUTHENVEETTIL HOUSE, CHITRAKALALAYAM ROAD,
EDAPPALLY TOLL, KOCHI-24.

7. BABU,
NERIYEKKAL HOUSE, SANTHINAGAR ROAD,
MAROTTICHUVADU, EDAPPALLY P.O., KOCHI-24.

8. C.C.SEBASTIAN,
CHIYEDATH HOUSE, NEAR TOLL, PUKKATTUPADY ROAD,
EDAPPALLY P.O., KOCHI-24.

9. C.C.POULOSE,
CHIYEDAN HOUSE, THOPPIL ROAD, EDAPPALLY P.O.,
KOCHI-24.

10. JACOB BENNY,
PULIKKODAN HOUSE, PALANCHERY, EDATHALA.

11. MERCY JOY,
PALAKKAL HOUSE, ST.VINCENT CONVENT ROAD,
CRRA B1, NEAR PIPELINE, PALARIVATTOM P.O.,
KOCHI-25.

12. STANLEY FERNANDEZ,
KALATHIPARAMBIL HOUSE, VARAPUZHA,
LANDING P.O., KOCHI-683 517.

13. ROBIN,
ALANGADEN HOUSE, NEAR THOPPIL,
THRIKKAKARA P.O., KOCHI-21.

14. VINCENT,
PANAKKOOTTATHIL HOUSE, GODOWN ROAD,
EDAPPALLY P.O., KOCHI-24.

15. K.D.XAVIER,
KANNAMPARAMBIL HOUSE, GODOWN ROAD,
EDAPPALLY P.O., KOCHI-24.

16. VIJAYAN,
MANAKKAPARAMBU VEEDU, GODOWN ROAD,
EDAPPALLY P.O., KOCHI-24.

17. KANNAN R.,
KURUPPUMPARAMBIL HOUSE, MANATHUPADAM,
CHANGAMPUZHA NAGAR P.O.

18. CHACKO MATHEW,
MUNDAKKAL, MAROTTICHODU, EDAPPALLY P.O.,
KOCHI-24.

19. TOMY EAPEN,
VADAKKARA HOUSE, SOBHA ROAD, TOLL EDAPPALLY P.O.,
KOCHI-24.

20. K.J.SEBASTIAN, M/S. K.V.JOSEPH & SONS,
CONTRACTOR, KURICKAL BUILDINGS,
EDAPPALLY P.O., KOCHI-24.

21. K.J.JOSEPH, M/S. K.V.JOSEPH & SONS,
CONTRACTOR, KURICKAL BUILDINGS, EDAPPALLY P.O.,
KOCHI-24.

22. PAUL P.C., S/O. CHACKO,
PADAYATTI HOUSE, MAROTTICHUVADU, EDAPPALLY P.O.,
KOCHI-24.

23. THANKAMMA, W/O. KOCHUMON,
MANAKKAPARAMBU HOUSE, GODOWN ROAD,
EDAPPALLY TOLL, KOCHI-24.

24. P.A.VINCENT,
PANAKKOOTTATHIL VEEDU, GODOWN ROAD,
EDAPPALLY TOLL, KOCHI-24.
(SECRETARY, LITTLE FLOWER WELFARE CENTRE).

25. N.C.TOMY, S/O. CHACKO,
NETTIKKADAN HOUSE, GODOWN ROAD, EDAPPALLY TOLL,
KOCHI-24.

26. P.V.POULOSE, S/O. VARGHESE,
PUTHENKUDY HOUSE, PERUMBAVOOR VILLAGE,
ERNAKULAM.

27. FEDERAL BANK,
KALAMASSERY.

28. CANARA BANK,
PALARIVATTOM.

29. K.J.JOHNY,
KATTITHARA HOUSE, MADHURIMA, NETHAJI ROAD,
VATTEKKUNNAM, EDAPPALLY NORTH, EDAPPALLY P.O.

30. M.I.VARGHESE,
MALAMEL HOUSE, UNICHIRA, CHANGAMPUZHA NAGAR P.O.,
KOCHI-33.

31. M.V.JOSE,
MALAMEL HOUSE, UNICHIRA, THRIKKAKARA P.O.,
KOCHI-21.

32. BABY T.A.,
CHERUVANNOOR HOUSE, UNICHIRA,
CHANGAMPUZHA NAGAR P.O., KOCHI-33.

33. JOSE CHACKO (APPACHAYI),
ATHIMOOTTIL HOUSE, UNICHIRA, CHANGAMPUZHA NAGAR
P.O., KOCHI-33.

R4, R20 TO R22, 30 TO 33 BY ADV. SRI.LITTO VARGHESE PALATHINKAL
SRI.A.P.SUBHASH
SRI.P.R.JAYAKRISHNAN
SRI.L.P.ARAVINDAKSHAN
R25 BY SRI.S.DILEEP (KALLAR)
SRI.KURIAN JOSEPH (ARAKKUNNAM)
R24 BY SRI.PETER THARAKAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1	**TRUE PHOTOCOPY OF IP 3/06 OF SUB COURT, ERNAKULAM.**
EXT.P2	**TRUE COPY OF AGREEMENT REFERRED IN IP 3/06 IN RESPECT OF ITEM OF B SCHEDULE.**
EXT.P3	**TRUE COPY OF TITLE DOCUMENT OF ALICE SAJU DTD.25.2.05.**
EXT.P4	**TRUE COPY OF IA 6738/06 IN IP 3/06 SUB COURT, ERNAKULAM.**
EXT.P5	**TRUE COPY IA 7040/06 IN IP 3/06, SUB COURT, ERNAKULAM.**
EXT.P6	**TRUE COPY OF THE PETITION DTD. 14.11.06 FILED BY THE 4TH RESPONDENT IN IP 3/06 SUB COURT, ERNAKULAM.**
EXT.P7	**TRUE COPY OF IA 2842/07 IN IP 3/07 SUB COURT, ERNAKULAM.**
EXT.P8	**TRUE TYPED COPY OF THE ORDER DTD.21/6/07 PASSED IN IP 3/07 , SUB COURT, ERNAKULAM.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 19595 OF 2007

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Dated this the 5th day of July, 2007.

J U D G M E N T

This writ petition is filed to set aside the order passed by the I Addl. Sub Court, Ernakulam in I.P.3/06. The learned Subordinate Judge by his order dated 21.6.07 dismissed the insolvency petition holding that there is no document supporting second item of property in B schedule and that the petitioner has not complied with the provisions in furnishing the details of assets in proper form.

2. Under ordinary circumstances I would not have exercised the jurisdiction under Article 226 or 227. But considering the facts and circumstances of the case I feel circumstances exist to exercise the jurisdiction in order to meet the ends of justice. I am conscious that Section 79 of the Insolvency Act provides remedy by way of an appeal. The petition is one to declare the petitioner as insolvent by virtue of a petition filed under Section 10 of the Insolvency Act. When a petition u/s 10 is filed certain mandates are to

be complied with. Similarly, there is Kerala Insolvency Rules as well. Rule VI deals with the particulars to be furnished by the judgment debtor. When judgment debtor files an application to adjudge him as insolvent and within 10 days of the admission of the petition by the judgment debtor he is bound to give particulars in the form of an affidavit in Form No.IV giving full and correct particulars of all his assets with a specification of the value of all property not consisting of money. I have also perused the said form which consists of 4 schedules namely A schedule to D schedule. The intention behind the direction to file such an affidavit is only to ensure that the judgment debtor who wants to get himself adjudged as insolvent does not suppress any material fact from the Court. In this case, unfortunately, the judgment debtor has not filed such an affidavit. So, one cannot find fault with the learned Subordinate Judge for dismissing it on that ground. But, so far as the title of the property is concerned whatever be the document let it be produced and the admissibility, credibility or acceptability can be looked into by the Court while adjudicating the matter and not at an earlier stage. Therefore, I am inclined to direct the learned Subordinate

Judge to restore the insolvency petition back to file. The judgment debtor is hereby directed to comply with all legal formalities embodied in Section VI of Kerala Insolvency Rules, 1959 within a period of 2 weeks from the date of restoration. On substantially complying with the procedural formalities the Court after due notice to others may proceed to dispose of the matter in accordance with law.

3. I also make it clear that the present writ petitioner is not entitled to transfer any of the immovable or movable belonging to him till he files an application before that Court because the moment he files that application then it is to be deemed that he has given all the properties to the custody of the Court. Therefore, further restriction on alienation may not be necessary. The parties are directed to appear before the Court below on 24.7.07 for further directions.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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